IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE FIFTEENTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE L.NARASIMHA REDDY

WRIT PETITION NO : 23162 of 2004

Between:

Toddy Tappers Cooperative Society, Veerlapally Village,
Ramagundam (M), Karimnagar District

rep by its president B.Raju Mallu.

..... PETITIONER

AND

1 The Commissioner of Prohibition and Excise, Nampally,

Hyderabad.
2 The District Collector, Karimnagar District.
3 The Prohibition and Excise Superintendent, Karimnagar District.
4 Toddy Tappers Co-operative Society, Venkatraopally Village,

Kamanpur Mandal, Karimnagar District,
rep by its President P.Bikshapathi Goud.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, direction or order more particularly one in the nature of writ of Mandamus declaring the Proceedings of the 1st respondent in Cr.No.13125/04/CPE/E4, dt.25.10.2004, in so far as directing the shifting of the petitioners Toddy Shop from Sy.No. 490, is in violative of the Principles of natural justice, illegal, arbitrary and violating of Article 14 of the Constitution of India and contrary to Rule 5 of A.P. Excise (Arrack and Toddy License General Conditions)

Rules 1969.

Counsel for the Petitioner:MR.M.SUBRAHMANYAM

Counsel for the Respondents 1 to 3: GP FOR PROHIBITION & EXCISE

Counsel for the Respondent No.4: MR. C.V.NAGARJUNA REDDY

The Court at the stage of admission made the following ORDER:

The petitioner is a Toddy Tappers Co-operative Society of Veerlapalli Village, Ramagundam Mandal, Karimnagar District. It was granted licence, through licence dated 01-04-2002, to establish a shop at Veerlapalli Village. The boundaries of the place where the shop is to be established were indicated therein. The petitioner claims that it is running the shop in the licenced premises. The fourth respondent is another society and was granted licence to run a shop in the neighbouring village, Venkatraopalli. The fourth respondent submitted an application to respondents 1 and 3 and prayed for a two-fold relief, namely to permit it to shift its existing shop in Survey No.500 to 490 and consequently direct the petitioner to shift the shop from Survey No.490.

Several proceedings ensued between the parties. Ultimately, the second respondent passed an order on 05-10-2004 rejecting the request of the fourth respondent. Acting on the same, the first respondent passed an order dated 25-10-2004 concurring with the second respondent in the matter of shifting of the shop of the fourth respondent. However, he further directed that the shop of the petitioner shall be shifted from the existing place. The same is challenged in this writ petition.

Sri M.Subrahmanyam, learned counsel for the petitioner submits that the relief claimed by the fourth respondent as to the shifting of the shop of the petitioner was consequential upon permission being accorded to it to shift its shop from Survey No.500 to 490 and once the main relief was rejected, the question of directing the petitioner herein to shift its shop from Survey No.490, does not arise. He also contends that the petitioner was not put on notice before its shop was directed to be

shifted.

Learned Government Pleader for Prohibition and Excise and Sri C.V.Nagarjuna Reddy, learned counsel for the fourth respondent, who took notice, at the stage of admission, on the other hand, submit that the first respondent recorded valid reasons, in support of his conclusion, and no exception can be taken to it. They contend that the establishment of shop by the petitioner in Survey No.490 was not only outside its area of operation, but is also in contravention of the various provisions of the Andhra Pradesh Excise Act and the Rules made thereunder.

The petitioner was granted licence by the competent authority, namely the third respondent, to establish a shop at Veerlapalli Village with the boundaries referred to therein. The allegation of the fourth respondent was that though the petitioner is

entitled to establish his shop within the area of Veerlapalli, its shop was located in Survey No.490 of Venkatraopalli. There is any amount of uncertainty as to the area of operations of the petitioner on the one hand, and the fourth respondent on the other. Even assuming that there is any overlapping of area in the matter of establishment of shops and if the respondents feel that any particular shop is to be shifted from the existing licenced premises, the minimum required of them, was issuance of a show cause notice to the affected party.

The subject matter of the proceedings before respondents 1 and 2 was the application of the fourth respondent seeking permission to shift its own shop and to require the petitioner to shift its shop to another place. The first limb of the request was rejected. In case respondents 1 and 2 intended to proceed against the petitioner and required it to shift the shop, independent of the denial of relief to the fourth respondent, they ought to have put the petitioner on notice. Admittedly, no such steps were taken. Therefore, the impugned order, in so far as it insists upon the shifting of the shop of the petitioner, cannot be sustained and the same is accordingly, set aside. It is, however, left open to respondents 1 and 2 to follow the procedure prescribed by law, in case they are of the view that the shop of the petitioner is to be shifted from the existing location. Since the said action is initiated at the request of respondent No.4, they shall issue notices to the petitioner as well as the fourth respondent and pass appropriate orders on consideration of the

contentions of the parties, without any further loss of time.

The writ petition is accordingly allowed. No order as to costs.

_____

15-12-2004

kdl

To

1 The Commissioner of Prohibition and Excise, Nampally, Hyderabad.
2 The District Collector, Karimnagar District.
3 The Prohibition and Excise Superintendent, Karimnagar District.
4 Two CCs to the Government Pleader for Prohibition & Excise, A.P.High Court Buildings, Hyderabad (OUT)

5 Two CD copies.